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NEW HAMPSHIRE LAW LIBRARY

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CONCORD, N.H.

Mr. Leonard S. Hill, Comptroller
Department of Administration and Control
State House
Concord, New Hampshire

Dear Mr. Hill:

This is in reply to your letter of August 27, 1958 in which you request our opinion with regard to whether funds appropriated for the mental hygiene clinics have lapsed. Laws 1955, chapter 328, section 1 provides in part as follows:

"Any balance of the appropriation provided by section 9 of chapter 279 of the Laws of 1947, as extended by section 8, chapter 8, Laws of 1950, section 1, chapter 164, Laws of 1951 and chapter 240, Laws of 1953 and the authority to issue bonds or notes thereunder shall not lapse but shall be continued and made available for the purposes specified hereinafter. . . ."

The purposes referred to in this section are spelled out in the remainder of that section and in section 3 as (1) construction of a building for an out-patient mental hygiene clinic for children, (2) furnishings and equipment for said building, and (3) preparation and plans for an in-patient mental hygiene clinic for children. This law took effect on August 5, 1955.

You state that each of the three above-named purposes have now been accomplished and further point out that three years have elapsed since the act took effect. You further call attention to the language, "shall not lapse but shall be continued and made available for the purposes specified hereinafter" as used in Laws 1955, chapter 328, section 1, as contrasted with the language which you say is usually employed in connection with an appropriation

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which is to continue more than three years and for an example refer to Laws 1957, 70:4 wherein the following language is found:

"The appropriation made hereunder shall be a continuing appropriation and shall not lapse."

You then request our opinion as to whether the balance of the funds referred to in Laws 1955, 328:1 have now lapsed.

We answer in the negative. We cannot see any real distinction between the language used in Laws 1955, 328:1 with regard to a continuing appropriation and the similar language used in other statutes such as Laws 1957, 70:4. We think that the legislative intent to create a continuing appropriation is equally clear in either case.

RSA 9:18 provides that except as otherwise specially provided, unexpended portions of special appropriations shall lapse when the object for which the appropriation was made has been accomplished, and in any event, at the expiration of three years from the date of the appropriation. However, in Laws 1955, 328:1, the legislature has "otherwise specially provided" by stating that these funds shall not lapse but shall be continued and made available. Therefore, RSA 9:18 is not applicable and this appropriation will not lapse either upon accomplishment of the objects for which it was made or at the expiration of three years from the date of the same.

If it is thought desirable that these funds should be lapsed legislation to that effect can be drafted for submission to the 1959 Session of the Legislature. Another method of disposing of these funds which might be considered would be to provide that they be applied toward whatever appropriation the 1959 Session of the Legislature makes for the mental hygiene clinic. If I can be of any assistance in that regard please feel free to call on us.

Sincerely yours,

John J. Zimmerman
Assistant Attorney General

JJZ/lt